

CHAPTER 19. FEES OF ATTORNEYS, INVESTIGATORS AND EXPERTS

19.1 Attorney's Fees in Cases Involving Claims of Minors, Insane or Incompetent Persons

Counsel fees in excess of the following schedule ordinarily will not be considered reasonable in actions compromised under section 372 of the Code of Civil Procedure or section 3500 of the Probate Code:

- a. Recovery two weeks or earlier prior to trial date first assigned case: 25% of net amount received.
- b. Recovery later than two weeks prior to trial date first assigned case or during trial: 33-1/3% of net amount recovered.
- c. Recovery after filing of respondent's brief on appeal or after affirmance: 40% of net amount recovered.

In computing fees the court will require parents claiming reimbursement for medical expenses, etc., to pay their proportionate share of the counsel fees except in cases of hardship. Reasonable costs incurred that were paid by counsel and are itemized and accompanied by appropriate vouchers or other supporting evidence will be allowed except they will not be included in the amount of the recovery on which fees are computed.

Eff. Jan. 1, 1999.

19.2 Attorney's Fees in Actions on Promissory Notes, Contracts Providing for Payment of Attorney's Fees and Foreclosures; Attorney's Fee Schedule

The following attorney's fees shall, under normal circumstances, be awarded in actions on promissory notes and contracts providing for the payment of attorney fees and foreclosures;

a. Default Action on a Note or Contract (exclusive of costs):

25% of the first \$ 1,000 with a minimum of \$150
20% of the next \$ 4,000
15% of the next \$ 5,000
10% of the next \$10,000
2% of the amount over \$50,000.

In an action upon contract providing for attorney's fees, the clerk shall include in the

judgment attorney's fees in accordance with this schedule, not to exceed the amount prayed for.

- b. Contested Action on Note or Contract.** The same amount as computed under subparagraph (a) increased by such reasonable compensation computed on an hourly or per day basis for any additional research, general preparation, trial or other services as may be allowed by the court.
- c. Foreclosure of Mortgage or Deed of Trust.** The same amount as computed under subparagraph (a) or (b) increased by 10%.
- d. Foreclosure of Assessment or Bond Lien Relating to a Public Improvement.** The same amount as computed under subdivision (a) or (b), except that the minimum fee shall be \$75.00 in an action involving one assessment or bond, and an additional \$20.00 for each additional assessment or bond being foreclosed in the same action.

Eff. Jan. 1, 1999.

19.3 Attorney's Fees in Guardianship and Conservatorship Proceedings

Attorneys for guardians or conservators are compensated according to the work actually performed. The size of the estate corpus and the responsibility assumed by the attorney are only two of the factors considered in arriving at the value of the services. Application for attorney's fees must be accompanied by a complete statement of the facts upon which the application is based, including a detailed statement of the amount of time devoted to each component of the services and must specify the amount requested for each item of service.

Eff. Jan. 1, 1999.

19.4 Attorney's Fees and Representative's Fees for Extraordinary Services in Probate Proceedings or in Any Matter Defined in the Probate Code for Which a Statutory Fee is Not Established

- a.** In evaluating the justification for an award of fees for extraordinary services or other services referred to herein, the court will take into consideration the statutory fee and consider whether it constitutes adequate compensation for all of the services rendered by the attorney or representative.
- b.** Notwithstanding the principles stated in the foregoing paragraph (a)

extraordinary compensation will be paid when requested for the following services:

1. Preparation of fiduciary tax returns and resolution of problems arising from the audit of such returns. Payments made to accountants or other tax preparers for such services and charged to the estate must be set forth in the request for extraordinary compensation and subtracted from the amount requested.
 2. Sales of property without a broker.
- c. Subject to the principles stated in the foregoing paragraph (a), compensation for extraordinary services will be considered in the following situations:
1. Litigation on behalf of the estate;
 2. Operating or selling a business;
 3. Sales of estate property;
 4. Performance of any act resulting in extraordinary benefit to the estate or requiring an extraordinary expenditure of time or display of confidence.
- d. Application for fees for extraordinary services will not be considered unless the title of the petition and the notice of hearing include a reference to the request. The prayer shall set forth the specific amount of the request.
- e. An application for compensation for extraordinary services or any other services for which a fee is requested other than ordinary services shall specify:
1. Date rendered;
 2. Services rendered in detail;
 3. Hours spent on ordinary services;
 4. Hours spent on extraordinary services;
 5. Hourly rate;
 6. Total amount requested.

Eff. Jan. 1, 1999.

19.5 Fees of Guardians and Conservators

Among factors to be considered in determining the compensation allowable to guardians and conservators are:

- a. The gross income of the estate;
- b. The success or failure of administration of the guardian or conservator;
- c. Any unusual skill or experience which the guardian or conservator in question may have brought to his work;
- d. The fidelity or disloyalty displayed by the guardian or conservator;
- e. The amount of risk and responsibility assumed by the guardian or conservator in carrying out such duties;
- f. The time consumed by the guardian or conservator in carrying out such duties;
- g. The custom in the community as to charges exacted by trust companies and banks;
- h. The character of the work done in the course of administration whether routine or involving skill and judgment;
- i. Any estimate which the guardian or conservator has given of the value of the guardian or conservator's own services (Estate of Nazro, (1971) 15 CA 3d 219).

Eff. Jan. 1, 1999.

19.6 Notices

Before any order for the payment of fees is made there shall be filed with the court proof that all parties entitled to notice have been given notice of filing the petition for payment of fees and a copy of the petition requesting such fees.

Eff. Jan. 1, 1999.

19.7 Fees and Commission Must Be Fixed by Court Prior to Payment

There is no authority for the payment of any fees or commissions in decedent's

estates, guardianships or conservatorships in advance of a court order authorizing the same. Representatives will be surcharged interest to the date of an order authorizing such payment unless in the case of a decedent's estate the written consent of the residuary beneficiaries is filed with the court and the amounts paid are reasonable and proper.

Eff. Jan. 1, 1999.

19.8 Court Appointed Attorneys: Standards of Experience and Allowable Fees and Expenses

The following procedure shall be used in fixing fees allowable to attorneys appointed by the superior court to represent individuals who are unable to employ counsel and who cannot be represented by the public defender or the appointment conflicts firms or attorneys who are employed by the public defender or appointment conflicts firm, but who are to be separately paid in accordance with this rule.

a. Application for Fees

1. The court shall allow attorney's fees and costs for services rendered and expenditures made by counsel properly appointed in criminal, juvenile or other matters while such matters are pending before the superior court. Such fees shall not include time spent traveling from one location to another.
2. Application for the payment of such fees and costs shall ordinarily be made at the time of the final superior court disposition of the proceeding in which court appointed counsel served, but in no event shall such application be presented more than 60 days thereafter. Pretrial interim application for fees may be made in cases involving the death penalty or life without the possibility of parole, or in exceptionally complex or lengthy cases upon special application; provided, however, that no pretrial interim authorization for fees shall exceed the sum of \$3,000.00 per month, plus expenses, for lead counsel and \$1,500.00 per month, plus expenses, for associate counsel, such funding limitations to be imposed as an average for the claim period.
3. Application for fees and costs shall be made by written declaration in a form to be approved by this court, itemizing the legal services rendered, the amount of time devoted to the case and the expenses incurred.
4. Application for fees and costs shall be submitted to the court executive officer for subsequent approval by the department in

which the case has been pending.

5. The court will allow a reasonable fee in consideration of the nature and complexity of the case and the degree of skill and effort required of counsel.

b. Categories of Charged Crimes or Other Matters

1. **Class 1:** All homicides, whether capital or noncapital, and all offenses having a maximum sentence of life or life without possibility of parole, or in the discretion of the court, an aggregate state prison sentence of 30 years or more.
2. **Class 2:** All crimes for which the upper term of punishment is five years or more, but less than Class 1.
3. **Class 3:** All adult felonies and felonies charged pursuant to Welfare and Institutions Code section 602.
4. **Class 4:** All civil matters, all other felonies and misdemeanors and juvenile matters where the petition seeks jurisdiction under Welfare and Institutions Code sections 601 and 602.

c. Minimum Experience Requirements for Appointed Attorneys

1. **Class 1:** Certified criminal law specialist or equivalent.
2. **Class 2:** Those who, as chief counsel, have handled twenty crimes charged as felonies, five of which were submitted to a jury for a decision: five of which included contested superior court proceedings such as Penal Code section 1538.5 or Penal Code section 995 motions; and the remainder of which proceeded to disposition. A maximum of ten juvenile cases charged as felonies may be counted toward the requirement of the twenty cases.
3. **Class 3:** One year experience as attorney; criminal defense experience.
4. **Class 4:** All attorneys.
5. Upon a proper showing, a person may be eligible for a class by virtue of showing of equivalent experience as determined by the presiding judge.

- d. **Fee Schedule.** All attorneys, as a condition to becoming eligible for appointments, shall agree to handle all cases to which they are appointed on a fee basis. The court will adopt a fee schedule separate and apart

from the court rules. Said schedule will be reviewed and adjusted as necessary annually.

1. Regardless of the fee schedule set forth, if an attorney believes that the case is of such a special or unusual nature that it is not possible to render services in accord with the maximum fee schedule, he/she must file a declaration declaring the reasons for that conclusion. Upon such written application, a reasonable fee in excess of the limits set forth in this schedule may be established by the judge presiding in the case.
2. Except as set forth in paragraph (4) below, attorneys shall not receive extra compensation for normal operating expenses such as mileage, photocopies and long distance telephone calls; extra compensation will be allowed for such expenses as fees for investigators and expert witnesses in accordance with these rules.
3. In all cases, the final fees allowed shall be determined by reference to the nature and complexity of the case and the degree of skill and effort required in handling the matter. Fee claims will be adjusted in accordance with this standard.
4. In the event that an attorney appointed by this court must appear in court of another county on a case transferred from this court, the attorney shall be entitled to reasonable travel and living expenses necessarily incurred in connection with his/her appearance in the court of the other county. Unless the appointed attorney obtains permission in writing from the presiding judge in advance, the attorney shall travel by private automobile and shall be reimbursed for necessary mileage at the rate allowed by the County of Mendocino at the time of the travel. In no event shall the attorney seek payment of fees for the time spent by the attorney while traveling. Living expenses for each such attorney will be allowed at the rate established by the State Board of Control Rules.

Any request for reimbursement of travel or living expenses shall be made by written declaration and submitted to the court executive officer who shall review such requests and recommend payment in appropriate cases to the presiding judge. All requests for such reimbursement shall include a complete inventory of costs and expenses with all applicable receipts attached.

Eff. Jan. 1, 1999. As amended, eff. July 1, 1999.

19.9 Investigation Fees and Expenses

- a. **License.** Each investigator shall provide the court executive officer with a true copy of his or her most recent license and a list of all employees

who are authorized to work thereunder.

- b. Work Performed.** Each billing shall clearly identify what work was performed by what persons. If work was performed by more than one person, some symbol shall be used to identify the hours actually worked and the tasks actually performed by each individual.
- c. Time To Submit Billing.** The investigator shall not submit a billing until his or her work on the case has been concluded; but, in no event shall such billing be presented more than 60 days thereafter. However, in unusual cases involving many hours of investigative work, the court may authorize interim billings, provided that such authorization is obtained in advance.

Where the court authorizes interim billings, each bill shall identify the period of time that it covers and shall be identified by a serial number (e.g. "Interim Billing No. 3").

- d. Order Of Appointment; Further Authorization.** Each order appointing an investigator shall provide a blank space for the judge to insert a dollar limit for the services to be provided. When this authorization or "cap" is exhausted, further authorization must be obtained from the court before billings in excess of the original amount will be paid. This authorization must be obtained in advance. When an attorney or investigator requests an order authorizing additional investigative time, the request shall be accompanied by a detailed statement of the work performed up to that time. This detailed statement will not be treated as a billing unless the court has granted authorization for interim billing.
- e. Meals; Lodging.** The court will not reimburse for meals or lodging unless advance approval has been obtained.
- f. Application for Fees and Expenses.** An application for investigation fees and expenses shall be made in writing by the assigned counsel and not the investigator as follows:
 - 1. To the judge of the department to which the case has been assigned;
 - 2. To the judge of the department to which the matter has been referred pursuant to Penal Code section 987.9;
 - 3. In all other cases to the presiding judge.
- g. Amount of Fees.**

- 1. **Cases Other Than Capital or Life Sentence Cases.** The initial application shall not exceed the sum of \$3,000.00. Additional

applications may be made upon a showing that further investigation is necessary in an amount not to exceed \$1,500.00 per application.

- 2. Capital and Life Sentence Cases.** Application for fees in capital cases shall be governed by the provisions of Penal Code section 987.9 and is upon a declaration by the appointed counsel. The initial application for capital and life sentence cases shall not exceed \$5,000.00. Additional application may be made upon a showing that further investigation is necessary in an amount not to exceed \$2,500.00 per application.
- 3. All Cases.** In no event shall the court grant fees or expenses not reasonably justified by the nature of the case as supported by written declaration by the assigned counsel. This rule will be strictly enforced. The declaration shall specify the nature and purpose of the proposed investigation and shall contain an estimate of the fees and expenses involved. The court will consider for payment long distance telephone calls and reasonable time spent in writing reports. Unusual or extraordinary requests shall be justified in detail. The court will not authorize payment without specific prior approval for:
 - a. Transportation services;
 - b. Clerical work;
 - c. Courtroom observation;
 - d. Defendant services, i.e., haircuts, shopping, mail services, etc.;

All billings shall contain a detailed and specific statement of services actually rendered. Time shall be billed in increments of 1/10 hour (See sample billing, Appendix A). The following types of services shall be separately stated:

- Travel time;
- Time spent interviewing witnesses;
- Time spent in conference with attorneys;
- Time spent reviewing reports or other documents;
- Time spent in measuring, diagramming or photographing scenes, locations, persons and objects;
- Time spent researching public records or in obtaining documents or other information.

Ordinarily, the court will not approve payment of time spent in locating a defendant

in a criminal case, a minor in a 602 juvenile case or a parent in a 300 juvenile matter. It is the duty of such persons to remain in contact with their attorneys and investigators.

Double billing for travel and similar expenses is prohibited (for example, an investigator traveling to a location to work on more than one case; the investigator shall bill only once for travel and related expenses).

The court will not approve payment of excessive time spent in conference with attorneys, fellow investigators or with the defendant. The billing must set forth a detailed explanation of the need for such conference time before the court will consider payment.

An investigator who wishes to bill for time spent with an attorney in court must obtain approval of the court before spending such time in court. The court will not approve payment for time spent with an attorney in court, unless there has been such prior approval.

In all criminal and juvenile cases, investigators' billings will be treated as confidential, will be placed in sealed envelopes and will be made available only to the court and authorized staff.

The court will not appoint investigators employed by the same firm to represent multiple defendants in criminal cases or different parties in a single juvenile case due to the potential for conflicts of interest.

An investigator has the duty to disclose fully in writing any payment or other compensation received from any source other than the court for services rendered in connection with any case in which the investigator has been appointed.

- h. Order for Payments.** The order for investigation fees and expenses shall be in the form set forth in a form approved by this court. All orders for payment shall include in the caption an accumulative total of all payments to date. Subsequent orders shall not include any expenses prior to the last order submitted.
- i. Maximum Rates for Investigative Services.** Claims for investigative services authorized pursuant to this rule shall be paid at a rate established by a general order of the court. General orders are on file in the office of the court executive officer.
- j. Submission of Claims.** Claims for investigation fees and expenses shall be made on a form approved by the courts to which must be attached a copy of the court order awarding fees and a detailed accounting of all claimed fees and expenses.

The claim shall first be submitted to the court executive officer for approval.

Eff. Jan. 1, 1999.

19.10 Nonpsychiatric Expert Fees and Expenses

- a. **Application for Expert Fees and Expenses.** Application for nonpsychiatric expert fees and expenses shall be made in writing as follows:
1. To the judge of the department to which the case has been assigned;
 2. To the judge of the department to which the matters has been referred pursuant to Penal Code section 987.9;
 3. In all other cases to the presiding judge.
- b. **Amount Of Fees.** In no event shall the court grant fees or expenses not reasonably justified by the nature of the case as supported by the written declaration. The written declaration shall specify the nature, purpose and materiality of the proposed expert services and shall contain an estimate of the fees and expenses involved including the proposed expert's hourly fees for court work and for courtroom testimony. The name of the expert to be retained and a brief statement of qualification shall also be included or attached. Unusual or extraordinary requests shall be justified in detail.
- c. **Order for Fees and Expenses.** The order for expert fees and expenses shall be on a form approved by this court.
- d. **Maximum Rates for Expert Services and Testimony.** Claims for expert services authorized pursuant to this rule shall not exceed the amounts approved by the court.
- e. **Submission of Claims.** Claims for expert fees and expenses shall be made on a form approved by this court to which must be attached a copy of the court order awarding fees and a detailed accounting of all claimed fees and expenses. The claim shall be submitted to the court executive officer for subsequent approval by the department which authorized the expenditure specified in paragraph (a) of this rule.

Eff. Jan. 1, 1999.

19.11 Claims for Payment

Court appointed attorneys, investigators and expert witnesses shall submit a County of Mendocino "Claim" form in order to receive payment for services rendered.

Each person seeking payment must complete and submit a claim substantially in the form set forth in Appendix A to Rule 19.

- a. Order of Appointment by Court.** Before payment may be processed, an endorsed copy of the order appointing the claimant must be attached to the claim form.
- b. Submission for Signature.** Each claim for payment should be submitted to the judge who made the appointment for signature on the claim form. Once the judge signs the order statement, the claim will be processed by the court executive officer.
- c. Time Limit for Submitting Claims.** Attorneys, investigators and expert witnesses appointed by the court shall file a claim for payment no more than sixty (60) days after rendering their services. Claims submitted beyond sixty (60) days will require a separate declaration explaining to the court that the delay was unavoidable. Consistent failure to provide timely claims will be considered by the court in future appointments.

Eff. Jan. 1, 1999.